

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

10,233

FILE: B-193454

DATE: May 21, 1979

MATTER OF: American Telephone and Telegraph Company

CNG 00750

**DIGEST:**

1. In two-step procurement, bidders do not have option of changing proposals during step two; therefore, agency properly rejected bid based on reference in step-one proposal to "optional proposals" which offeror might wish to submit after surveying agency facilities.
2. First step in two-step procurement lends itself to discussion and clarification of technical proposals; whether use of equipment in manner which varied from specifications was acceptable should have been determined during this step, rather than carried over to step two.
3. In two-step procurement, when bidder takes exception to material requirements of specifications, bid submitted in step two must be rejected as nonresponsive, even though proposal was accepted in step one.
4. Protest based on denial of information concerning awardee's bid price and evaluation of that price becomes moot when procuring agency releases information.
5. Protest based on alleged denial of access to agency facility to enable offeror to prepare proposal is untimely when made for first time during GAO conference on other aspects of protest.

[Protest Involving Two-Step  
Procurement]

005360

American Telephone and Telegraph Company (AT&T) protests rejection of a bid submitted by its subsidiary, the Northwestern Bell Telephone Company (Northwestern Bell), in the second step of a two-step advertised procurement for a telephone system for the Veterans Administration (VA) Medical Center, Minneapolis, Minnesota.

AT&T also protests the cost evaluation of the winning bid and the VA's initial refusal to release that evaluation, arguing that its own price was lower and that the awardee's refusal to allow release of its price made the bid nonresponsive. In addition, AT&T alleges that it was denied access to the medical center to survey the VA's needs.

For the following reasons, we agree with the VA that the bid was for a proposal which had not been accepted during the first step of the procurement; it therefore was properly rejected. The remaining grounds of protest are either moot or untimely.

The step-one request for proposals (RFP), No. 78-38, issued April 6, 1978, encouraged offerors to submit multiple proposals, presenting different basic approaches but omitting prices. Each proposal was to be evaluated separately under two criteria: (1) past demonstrated ability to provide equivalent-type service and (2) compliance with technical specifications.

Northwestern Bell, in a single submission, proposed to lease the VA a Dimension 2000 Electronic Private Branch Exchange (EPBX) which it described as "an automated system manufactured by Western Electric which utilizes time division switching." The proposal specifically stated that the system would "provide all of the features and requirements specified in the solicitation." However, in sections dealing with intercom systems and electronic switching, the firm indicated that it might wish to submit optional proposals after it had reviewed the VA facility. The VA specifications, and the corresponding sections of the proposal which are at issue, were as follows:

VA Specification

## 5.7.1

"Telephone intercom systems shall normally be associated with a key system. The intent of the telephone intercom system is to provide secretaries with a means of announcing calls to offices with extensions/pick ups on the key system."

\* \* \*

## 5.9

"Additionally, where all specified features are only available in a specially designed system station set, or where features embodied in this type of set will eliminate extensive key system equipment, substitution of this type of station set for those specified in Section V shall also be proposed. Bidders shall certify that DTMF [Dual Tone Multi-Frequency] specially designed system station sets (custom telephones) are required and/or that these custom telephones will result in reduction of existing costs, or are provided without extra cost."

Northwestern Bell  
Proposal

## 5.7.1

"The Telephone Company will provide intercom systems as specified by the VA. However, we may wish to make optional proposals for VA's consideration upon making a station review."  
(Emphasis added.)

\* \*

## 5.9

"Features stipulated by the VA are available with our proposed PABX system without the use of specially designed station sets. However, the Telephone Company upon review of the Facility Layout (Section 5) may wish to submit optional proposals utilizing electronic telephone instruments where such replacements eliminate or reduce extensive key system equipment at an economic advantage to the VA." (Emphasis added.)

On July 19, 1978, the VA notified Northwestern Bell, Golden State Telephone Company (Golden State), the subsequent awardee, and three other offerors that their proposals had been accepted; each of these firms was invited to respond to the step-two invitation for bids (IFB), No. 78-39, issued the same date.

The IFB stated that any bidder who had submitted multiple technical proposals in the first step of the procurement might submit a separate bid covering each proposal which had been accepted. It also stated that bidders might not offer any other equipment, and cautioned bidders that to do so might result in their bids being rejected as nonresponsive.

Northwestern Bell submitted three bids: Option I, a 10-year, two-tier pricing plan; Option II, a 7-year, two-tier pricing plan; and Option III, a 7-year, two-tier pricing plan

"with a cost reduction in key telephones based on utilizing the many cost saving features provided with the Dimension 2000 PBX system."

The last option is the subject of this protest.

The VA evaluated costs on the basis of a 10-year contract period, using a complex formula designed to permit comparison of lease with purchase costs and of rates proposed by the telephone company, which is tariffed, with those of interconnect companies, which use different costing techniques.

Northwestern Bell's Option III was declared non-responsive and was evaluated for information purposes only. The contracting officer's technical representative stated:

"This alternate proposal does not follow the Technical Specification Facility Drawings from Step One. \* \* \* [T]o re-engineer the proposed system to eliminate all (or most) key system/ multi-button set requirements is not permitted."

AT&T protests this determination, arguing that when the VA invited it to submit bids for step two, without specifically rejecting the optional proposals referred to in its step-one submission, Option III had been accepted "by inference of non-rejection." AT&T argues that the bid was for equipment which had been found technically acceptable, and involved using that equipment in a manner which reduced the number of key telephones, thereby reducing costs. The firm further argues that in previous VA telephone system procurements, virtually identical technical proposals had been accepted. These, however, were sole-source negotiated procurements, the VA indicated at a conference at our Office.

We believe AT&T's protest in this case reflects a fundamental misunderstanding of the purpose and procedures for two-step formal advertising, in which all details are negotiated in the first, or qualifying step, and all bids submitted in the second, or competitive, step must be for specific technical proposals, as finally accepted in the first step. Bidders do not have the option of changing their proposals during step two. Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15; Federal Procurement Regulations (FPR) § 1-2.503-1 and -2 (1964 ed.).

We also believe this protest could have been avoided if the VA had either sought clarification of or rejected Northwestern Bell's references to "optional proposals" in the step-one submission. The first step in a two-step procurement lends itself to discussion and clarification of the provisions of the technical proposal by the potential offeror. The question of whether use of the Dimension 2000 in a manner which reduced the number of key system/multi-button telephones was acceptable should have been determined during this step, rather than being carried over to step two. See B-178302, October 19, 1973.

Nevertheless, we cannot conclude that the references to "optional proposals" constituted an alternate technical proposal which the VA accepted. Northwestern Bell did not provide the detail and certification required by paragraph 5.9 of the

specifications, quoted above, if extensive key system equipment was to be eliminated. The VA obviously considered a reduction in the number of key telephones a material deviation from its specifications. In a two-step procurement, when a bidder takes exception to material requirements of specifications, the bid submitted in step two must be rejected as nonresponsive, even though the proposal was accepted in step one. Dravo Corporation, B-191005, May 12, 1978, 78-1 CPD 369; see generally B-171839, September 27, 1971.

In view of this finding, we need not discuss the cost evaluation of Golden State's bid. Since Northwestern Bell's Option III was not a responsive bid, whether it was lower than Golden State's is irrelevant. As for refusal to release Golden State's bid price, although AT&T's Freedom of Information Act request initially was denied, Golden State did not object to release of its bid price, and the VA subsequently agreed to release both Golden State's itemized prices and the calculations by which the bid was evaluated. This ground of protest therefore is moot.

Finally, at a conference at our Office, AT&T for the first time alleged that the VA had refused to allow a survey of medical center facilities. The VA states that the only request for such a survey was made before the step-one RFP was issued, and was for the stated purpose of determining the needs of hospital department heads; the request was denied because VA officials felt that the VA, as the procuring agency, should determine its own needs.

Even if AT&T's allegation is true, this ground of protest is untimely. The denial of access should have been protested, either to the VA or to our Office, within 10 days after it occurred. See 4 C.F.R. § 20.2 (1978). Accordingly, we will not consider the matter.

The protest is denied.



Deputy Comptroller General  
of the United States